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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

RUTH JAFFE,
Petitioner,

vs.

HARDY M. SNOW, JR. and
ACCREDITED SURETY & CASUALTY COMPANY, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA,
FIFTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether international agreements between the United States and Canada and overriding federal interests in international comity require the Florida courts to enforce Petitioner's valid Canadian judgment against the Florida defendants who were responsible for the kidnapping of Petitioner's husband by bounty hunters in Canada.

2. Whether Petitioner was deprived of her due process rights under the Fourteenth Amendment when the Florida courts refused to enforce a valid Canadian judgment because it considered Petitioner's claims to be derivative of her husband's claims and her husband's claims to be barred for policy reasons.

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No.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

Ruth Jaffe petitions the Court for a writ of certiorari to review the judgment of the District Court of Appeal of the State of Florida, Fifth District in this case.

OPINIONS BELOW

The opinion of the Fifth District Court of Appeal of the State of Florida is reported at 610 So. 2d 482, and is set out in Appendix A, pp. A1-A16. The order of the Court of Appeal denying rehearing has not yet been reported, and is set out at Appendix B, p. A17. The order of the Supreme Court of Florida declining jurisdiction has not yet been reported, and is

set out in Appendix C, p. A18. The opinion of the Ninth Judicial Circuit, in and for Orange County, Florida, granting summary judgment to Respondents is set out in Appendix D, pp. A19-A28. The judgment of the Ontario Court (General Division) is set out in Appendix E, pp. A29-A31.

JURISDICTION

The order of the Supreme Court of the State of Florida denying Petitioner's petition for review was entered on May 10, 1993. The jurisdiction of this court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS AND TREATIES INVOLVED

Fourteenth Amendment to the United States Constitution:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supremacy Clause in Article VI of the United States Constitution:

> [2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the

> supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Relevant passages from the Treaty on Extradition Between the United States of America and Canada (27 U.S.T. 983 (1976)) are set out in Appendix I. The Protocol Amending the Treaty on Extradition (27 I.L.M. 422 (1988)) is set out in Appendix H. The Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States Concerning the Protocol (27 I.L.M. 422 (1988)) is set out in Appendix G.

STATEMENT

Petitioner, Ruth Jaffe, filed a petition in 1990 in the Circuit Court of the Ninth Judicial Circuit, Orange County, Florida to recognize and enforce a money judgment which she obtained in the Canadian courts against Accredited Surety & Casualty Company, Inc., a Florida company, and its president, Hardy Snow, a Florida citizen, for injuries she suffered as a result of the kidnapping of her husband, Sidney Jaffe, in Canada by bounty hunters sent into Canada by Respondents.

The Circuit Court granted summary judgment in favor of Snow and Accredited. (App. D). The Circuit Court found that it would be against Florida's public policy to allow Petitioner to collect her valid Canadian judgment because her claims were "derivative" of her husband's and Mr. Jaffe could not collect such a judgment in Florida because it would enable him to profit from his own "wrong." (App. D, p. A25). The Circuit Court also found that there were no treaties or statutes, state or federal, that required Florida to recognize Petitioner's judgment and that such recognition was a matter of "mere courtesy and good will," citing *Hilton v. Guyot*, 159 U.S. 113 (1895). (App. D, p. A22).

Petitioner appealed from the judgment. The Fifth District Court of Appeals affirmed the Circuit Court's judgment on November 13, 1992. (App. A, pp. A1-A16). A rehearing was denied on January 12, 1993. (App. B, p. A17). Petitioner filed a timely motion to invoke the jurisdiction of the Supreme Court of Florida, which was denied on May 10, 1993. (App. C, p. A18).

This case has its origins in claims by the Florida state authorities that Petitioner's husband, Sidney Jaffe, engaged in unlawful land sale practices. Mr. Jaffe was arrested in Florida in August 1980 on such charges. He obtained bail from Respondent Accredited Surety & Casualty Company ("Accredited") and was released from custody. He then returned to his home in Toronto, Canada. Petitioner and Mr. Jaffe are Canadian citizens.[1]

On the scheduled day of his trial, Mr. Jaffe's Florida attorneys appeared on his behalf and informed the court that Mr. Jaffe could not attend for medical reasons and sought a continuance. Instead, the request for a continuance was denied and an arrest warrant issued. The judge also ordered that the bond be forfeited and directed the state attorney to commence extradition proceedings to procure Mr. Jaffe's return from Canada. The state attorney submitted two applications for extradition to the Governor of Florida, both of which were disapproved by the Florida Attorney General.

Not content to let the forfeiture and extradition proceedings run their course,[2] respondent Snow, the President

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[1] The Florida courts have erroneously considered Mr. Jaffe to be a U.S. citizen (App. B, p.A-20).

[2]While the Appellate Court is correct that Unlawful Land Sales Practices are not among the extraditable offenses listed in the treaty between the United States and Canada, fraud is an extraditable offense under the treaty, and the state of Florida was trying to prove that Mr. Jaffe defrauded purchasers in property deals. Treaty on Extradition, Dec. 3, 1971, United States-Canada, 27 U.S.T. 983,

of Accredited, and Accredited, decided to obtain Jaffe by extralegal means. Despite the fact that transborder "bounty hunting" is illegal in the United States and Canada, Snow and Accredited hired two bounty hunters and sent them to Canada to abduct Mr. Jaffe and bring him to Florida. On September 21, 1981, while jogging near his home in Canada, Mr. Jaffe was forcibly abducted, illegally confined, and driven to the United States-Canada border where the bench warrant was used to secure his entrance into this country. He was then flown to Florida for detention and trial.[3]

The Government of Canada filed formal protests with the Government of the United States objecting to the abduction and demanding that Mr. Jaffe be released. The United States Department of Justice and the United States Department of State condemned Mr. Jaffe's abduction from Canada as a violation of United States public policy.

The United States Secretary of State George Shultz recognized "the gravity of the incident" in the following words:

> it is perfectly understandable that the Government of Canada is outraged by [Mr. Jaffe's] alleged kidnapping, which Canada considers a violation of the treaty and of

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997-998, T.I.A.S. 8237. The Appellate court was therefore in error when it relied on the finding in *Jaffe v. Smith*, 825 F.2d 304 (11th Cir. 1987) that Canada would not have been obligated to surrender Mr. Jaffe on those charges, even if a formal extradition treaty had been made by the governor of Florida. Two requests for the extradition of Mr. Jaffe were denied by the Governor for improper form, not because extradition would be inappropriate under the treaty.

[3]As stated in the Canada *Amicus Curiae* brief, transborder bounty hunting has been condemned by the international community. It is the criminal offense of kidnapping in Canada, the United States and Florida; kidnapping is an extraditable offense in both countries. (App. F, p.A37).

> international law, as well as an affront to its sovereignty.

Canada Amicus Curiae brief filed in *Jaffe v. Snow*, 610 So. 2d 482 ("Canada brief") (App.F, pp.A36-A37).

Secretary Shultz further recognized the serious effect of the kidnapping on Canada-United States relations, and he stated United States public policy when he said:

> It is simply in the national interest that this case no longer be permitted to intrude upon our relations with one of our most important and highly valued neighbors.

Id. (App. F, pp. A37-A38).

In 1982 the bounty hunters hired by Accredited and Snow were indicted by the Government of Canada for kidnapping. Extradition was requested by Canada, initiated by the United States Government, and granted by the United States Magistrate.[4] The bounty hunters appealed. In 1983 the bounty hunters were ordered extradited to Canada.

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[4]Explicitly defining the United States policy on transborder abductions from Canada by bounty hunters, is the letter dated January 11, 1988, from Secretary of State Shultz to Canada's Minister of External Affairs Joe Clark. Furthermore, the United States reiterated that it would cooperate to discourage and deter any further bounty hunter excursions into Canada. A copy of the exchange of letters, which was attached to the Amicus Brief of the Government of Canada (App. F), is contained in App. I.

On September 3, 1983, Mr. Jaffe's convictions on the unlawful land sale practices charges were reversed, but his conviction on the charge of failure to appear was affirmed.[5]

In 1983, Mr Jaffe was charged with organized fraud.[6] At Mr. Jaffe's bond hearing on September 30, 1983, the Canadian Government, the United States Department of State and the United States Department of Justice all appeared to explain their interest in the case.[7]

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[5]The decision overturning the convictions concluded: "because we decide this case on the basis of the failure of the charging document to state a criminal cause of action under this statute and because we conclude that even if the charging document accurately tracked the statute the proof at trial would not sustain those allegations, we do not reach the constitutional question presented and this opinion should not be construed to even impliedly uphold the constitutionality of this statute as against the claim that it is too vague and ambiguous to reasonably apprise a person of the conduct he must avoid in order to keep from being guilty of a felony crime." *Jaffe v. State of Florida*, 438 So. 2d 72, 74 (Fla. 5th Dist. Ct. App. 1983)("Jaffe I"). Surprisingly, despite this strong language, the trial court found and the appellate court quoted the finding that, "the unlawful land sales practices were not 'unfounded.' [T]he reversals were not based upon insufficient evidence but rather upon the legal insufficiency of the charging document." (App. A, p. A5). (The case referred to as Jaffe II is reported at 463 So.2d 318 (Fla. 5th Dist. Ct. App. 1984), and mischaracterizes the holding in Jaffe I).

[6]Although it is conceded that this charge is an extraditable offense under the Extradition Treaty between the United States and Canada, Florida has never sought the extradition of Mr. Jaffe on this charge.

[7]The United States Department of State explained the federal interest in the case as follows: "In sum, Your honor, I simply want to point out that among the totality of circumstances that you will wish to take into consideration as deciding the proper sum would be for bail, one such consideration I submit is that, in arriving at the reasonable figure for bail, you should take into consideration that the

On October 11, 1983, Mr. Jaffe was released. Upon release, Mr. Jaffe immediately returned to his home in Canada.

In 1985, Petitioner brought suit in the Supreme Court of Ontario, Canada, against Snow and Accredited and other defendants, seeking money damages for the damages she suffered as a result of Mr. Jaffe's illegal abduction. Snow and Accredited, represented by Canadian counsel, filed their appearance in the Canadian action.

In 1986, the two men who physically kidnapped Mr. Jaffe were tried and convicted in the Canadian courts.[8]

On November 22, 1990, the Ontario court entered judgment in favor of Petitioner and against Accredited and Snow in the amount of $177,752.30 Canadian dollars and $1,401,570.80 United States dollars. Only $25,000 Canadian dollars of the entire judgment was for general damages. The judgment was based on extensive documentation that Petitioner filed to support her special damage claims. The special

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continued incarceration of Mr Jaffe will have the deleterious effects upon our relationship with Canada that I just outlined." Transcript of bond hearing proceedings on September 30, 1983 at 44, *State of Florida v. Jaffe*, Case No. 83-638-CF-J (Fla. 7th Cir. Ct. 1983). Canada emphasized its concerns about the rule of law: "Under international law, Canada is entitled to Mr. Jaffe's return and regards these proceedings as contrary to its rights of superior custody of Mr. Jaffe. Canada submits that given the specific circumstances of this case, Mr. Jaffe's immediate release and return to Canada would be in accordance with international law and the law of the United States." *Id.* at 41. Since Canada believed that under international law it had superior custody it argued that Florida should seek extradition of Mr. Jaffe on the organized fraud charges. To date, no such action has been made to extradite Mr. Jaffe from Canada to the United States. That the Florida courts have refused enforcement of the judgment on the basis of these facts alone raises comity and federal public policy questions.

[8]*Johnson v. Kear*, Ont. H.C. June 9, 1986, *affirmed*, 5 C.C.C. (3d) 574 (Ont. C.A. 1989).

damages award reflected the Petitioner's expenses she incurred as a result of her husband's illegal abduction. Mrs Jaffe's expenses totaled $903,481.47 United States dollars and $88,293.56 Canadian dollars. Mrs Jaffe was also awarded pre-judgment interest on all sums. (App. E, pp. A30, A31). The special damages were not a punitive award.

Petitioner then brought the action below seeking to enforce her Canadian judgment in Florida. On July 26, 1991, the trial court entered its order granting judgment in favor of Snow and Accredited. (App. D, pp. A19-A28). The court recognized the Ontario judgment as valid and rejected all of Snow and Accredited's procedural and technical defenses. However, the court held that it was not compelled to recognize the judgment, and refused to do so on public policy grounds.

Petitioner then appealed that ruling to the Fifth District Court of Appeal. The Fifth District Court of Appeal affirmed. The Appellate court adopted the view that the "recognition and enforcement of a foreign country's judgment in Florida is a matter of 'comity,' and it is up to the courts of this state to make the particular determination in each particular case." (App. A.p.A8). The court further held that "no jurisdiction will give comity to the judgment of another nation that offends the jurisdiction's public policy and sense of moral justice." (App. A, p.A9). The court recognized that Florida recognizes and enforces the judgments of other nations in the overwhelming number of cases, and that this is particularly true of countries like Canada which have a system of jurisprudence which has developed from the same roots as our own. However, the opinion states:

> In this case, had Sidney Jaffe sought to enforce a Canadian judgment against his surety in this state, there are many public policy reasons why a Florida court would refuse to recognize and enforce it, which go far beyond the fact that the law of Canada (bounty hunters cannot single-handedly arrest and return a bond-

> jumper to the court which accepted the bond) is different than Florida's law. (App. A, p. A9).

There was no discussion of federal law concerning the illegality of bounty hunting -- which is an extraditable offense under the Extradition Treaty between the United States and Canada -- or of any of the federal interests in this case. Instead, the Florida court did find that Sidney Jaffe was a fugitive from justice. The Appellate court noted that Florida courts had an established public policy that the Florida court will "not permit or tolerate a person to benefit from his own wrongful act." (App. A, p. A14).

The Appellate court also found that the Petitioner's claims were derivative, since the court reasoned the Petitioner's cause of action was necessarily born out of Sidney Jaffe's tort suit for wrongful kidnapping. Broadly construing the fugitive from justice doctrine, the court held:

> The fugitive from justice doctrine would bar any of Jaffe's claims for damages from his return to Florida by his bondsmen. Mrs Jaffe's claims are derivative of her husband's and likewise are barred under the fugitive from justice doctrine.

(App. A, p. A16).

The Appellate court denied Mrs. Jaffe's motion for rehearing, and the Supreme Court of Florida denied her petition for a hearing.

REASON FOR GRANTING THE PETITION

I. THE FLORIDA JUDGMENT BELOW CONFLICTS WITH INTERNATIONAL AGREEMENTS BETWEEN THE UNITED STATES AND CANADA AND OVERRIDING FEDERAL INTERESTS THAT REQUIRE THE FLORIDA COURTS TO GRANT COMITY BY ENFORCING THE PETITIONER'S JUDGMENT.

The refusal of the Florida courts to enforce Petitioner's valid Canadian judgment against those responsible for her husband's illegal, forcible abduction from Canada is in direct conflict with international agreements between the United States and Canada and with overriding national interests and federal public policy that oppose the lawless abduction of persons from other countries generally and in this case which is deeply resented in Canada.

There is no dispute as to the validity of the judgment of the Supreme Court of Ontario in favor of Petitioner. The principles of international comity require the enforcement of a foreign judgment unless enforcement would be so abhorrent as to offend the sensibilities or morality of the forum. The Florida court based its decision not to enforce the valid judgment solely on its own view of Florida public policy grounds, without reference to federal public policy interests and agreements between the United States and Canada that would be undermined by this assertion of Florida public policy. The Petition should be granted to resolve this fundamental conflict between state public policy interests and the overriding interests of the federal government requiring enforcement of Petitioner's judgment.

The United States has an affirmative duty to deter transborder bounty hunting from Canada to the United States. This obligation was specifically set out in an exchange of letters between Secretary of State Shultz and Joe Clark,

Secretary of State for External Affairs of Canada. The letter included the following language:

> The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters", is an extraditable offense under the United States-Canada Extradition Treaty....
>
> Canada and the United States agree to cooperate to deter such transborder abductions.

(App. G, pp. A42-A43).

The Canadian government informed the Florida courts that,

> the interpretation of Florida public policy in the summary judgment is contrary to the public policy of the United States as evidenced in the January 11, 1988 Exchange of Letters Constituting an Understanding between the Government of Canada and the government of the United States concerning the Protocol Amending the Treaty on Extradition.

(Canada Amicus Brief, at App. F, p. A35). The Florida courts declined to give any weight to the exchange of letters between the United States and Canada, or, indeed, to any of the important federal interests at stake in the recognition of Petitioner's judgment.

United States v. Pink, 315 U.S. 203 (1942), made clear that the Supremacy Clause extends to international agreements. "[S]tate law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement. Then the power of a state to refuse

enforcement of rights based on foreign law which runs counter to the public policy of the forum must give way before the superior federal policy evidenced by a treaty or international compact." *Pink*, 315 U.S. at 231.

Even if the court were not to interpret the exchange of letters and extradition treaty itself as requiring the enforcement of the judgment as a matter of our domestic law, they evidence a clear federal policy. The Supremacy clause of the constitution and *Pink* make clear that State public policy interests must yield to federal policy interests.

At issue here is whether a Canadian judgment should be enforced, pursuant to a treaty and subsequent agreements between Canada and the United States. "Power over external affairs is not shared by the states; It is vested in the national government" *Pink*, 315 U.S. at 233. "If state laws and policies did not yield before the exercise of the external powers of the United States, then our foreign policy might be thwarted." *Pink, 315 U.S.* at 238. As outlined below, Florida's perceived policy interest is in direct conflict with federal foreign policy interests. The Florida court's failure, not only to give effect to superior federal policy, but even to consider federal policy, is a violation of the Supremacy Clause of the Constitution of the United States. U.S. CONST. art VI, cl. 2.

Florida's refusal to enforce the judgment runs contrary to the clearly articulated intent of the extradition treaty between the United States and Canada to deter abductions. Secretary of George Shultz recognized the negative effects that Mr. Jaffe's abduction was having on United States-Canada relations when he wrote to the Probation and Parole Commission of the State of Florida to urge board to grant parole to Sidney Jaffe. The letter stated, "the Jaffe case threatens to have a generally deleterious effect on our relations with Canada. . . . It is simply in the national interest that this case no longer be permitted to intrude upon our relations with one of our most

important and highly valued neighbors, allies and trading partners."[9]

"Transborder bounty hunting has been condemned by the international community. It is the criminal offense of kidnapping in Canada, the United States and Florida; kidnapping is an extraditable offense in both countries." *Canada Amicus Brief*, App.F,p.A37. There is no doubt that every nation must take all necessary steps to prevent people within its borders from engaging in the violation of the territorial sovereignty of other nations in this way.

In Ker v. Illinois, 119 U.S. 436 (1886), private damage remedies were seen as the appropriate remedy for illegal transborder abductions. "The party himself would probably not be without redress, for he could sue . . . in an action of trespass and false imprisonment, and the facts set out in the plea would without doubt sustain the action." *Ker*, 119 U.S. at 425. The decisions below undermine the foundation of the *Ker-Frisbie* doctrine by eliminating a key means to deter such conduct and, in fact, sending a signal that bounty hunters will be protected in Florida from civil sanctions for their wrongs. Florida's vast extension of the fugitive from justice doctrine overreaches its policy goals and is completely at odds with this country's international obligations.

It is clear that the kidnapping of Sidney Jaffe was an illegal act that was inconsistent with U.S. public policy and international law. Indeed whether Mr. Jaffe was in fact a

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[9] Daniel McGovern, principal deputy legal advisor, United States Department of State, elaborated on Mr. Shultz's letter at the bond hearing in *State of Florida v. Jaffe*, Case No. 83-638-CF-J (7th Fla. Cir. Ct. 1983) on September 30, 1983. "The issue of Mr. Jaffe's removal from Canada has been raised at nearly every high level contact between our two countries in the past two years. It has diverted attention from important and substantive issues which need to be addressed between these two important friends, neighbors, allies and trading partners. It has, in short, acted as a very significant irritant in our relationship."

fugitive from justice is irrelevant because, as then Secretary of State Shultz has stated, there was a legal apparatus which the respondents should have utilized: "As no good reason appears why the extradition treaty was not utilized to secure Mr. Jaffe's return, it is perfectly understandable that the government of Canada is outraged by his alleged kidnapping, which Canada considers a violation of the treaty and of international law, as well as an affront to its sovereignty." (App. F, pp.A37-A38). That the United States government is of the view that the abduction was illegal is further evidenced by the extradition from the United States to Canada of the two men who abducted Mr. Jaffe.

The Court of Appeals' opinion offers a safe haven from civil liability for those who engage in transborder kidnappings in violation of U.S. law, Canadian law and international law. The decisions below make a mockery of the State Department's and the Justice Department's efforts in this case to assure Canada that the United States would take all appropriate steps to deter such abductions. Under *United States v. Pink*, *supra*, the Florida decision impairs the policies underlying the extradition treaty between the United States and Canada, the formal exchange of letters between the United States and Canada in this case and general principles of international law applicable to and accepted by the United States government.

The decisions below are especially egregious given the long history of satisfactory extradition relations between the United States and Canada. The United States and Florida have a paramount interest in having American judgments honored in Canada. By impermissibly refusing to enforce a valid Canadian judgment, serious consequences could ensue from which all states would suffer. If sufficient evidence against Mr. Jaffe existed and it was properly presented, Mr. Jaffe could have been extradited to the United States under the extradition treaty between the United States and Canada. Indeed, Canada has never said that it would, if asked, refuse extradition of Mr. Jaffe.

"In Florida, the rules of comity may not be departed from except to protect the citizens of our state or some paramount public policy." *Belle Island Inv. Co., LTD v. Feingold,* 453 So.2d 1143, 1145 (Fla.App. 3 Dist.1984). The Florida courts declined to give effect to Petitioner's judgment because of the state interest in not allowing Mr. Jaffe to benefit in any way after refusing to come back to Florida to stand trial. As will be discussed below, Florida had no legitimate public policy interest in denying petitioner enforcement of her judgment because she had been harmed by an illegal abduction and is not a fugitive from justice.

The invocation of the "fugitive" doctrine by the Florida courts is at odds with its own law and conflicts with paramount federal public policy interests favoring comity discussed above. To deny enforcement of the judgment shows a blatant disrespect for the Canadian courts and rewards Respondents for both conducting an illegal abduction and mounting an inadequate defense in the Canadian courts. More importantly, Florida, while failing to demonstrate a paramount state policy that would allow it to deny comity to the Canadian judgment under its own laws, has denied comity in a situation where international agreements between the United States and Canada and overriding federal policy demand comity.

The United States interest in providing for the enforcement of foreign judgments in all but the most exceptional circumstances is extremely strong, especially in a case like this where the enforcement of Petitioner's judgment would deter lawless activities the United States has bound itself to deter. The Florida courts, by refusing to enforce Petitioner's judgment, impermissibly denied Petitioner her right of access to the courts; undermined the principle of comity; violated the policy interests behind the extradition treaty with Canada; and violated international customary norms regarding territorial sovereignty.

II. THE FLORIDA JUDGMENT BELOW VIOLATES PETITIONER'S RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE CONSTITUTION.

The only reason given by the Florida court for not enforcing Mrs. Jaffe's valid Canadian judgment is that it would violate Florida public policy to allow a fugitive from justice to make use of the courts, or to allow a wrongdoer to benefit from his wrongdoing. No one alleges that Mrs. Jaffe is a fugitive or a wrongdoer. The decisions below rest wholly on the assertion that Mrs. Jaffe's claims are entirely derivative of her husband's claims. This assertion is false.

Agents of the Respondents, Snow and Accredited, kidnapped Mr. Jaffe in violation of the laws of Canada and the United States. Canada sought extradition of the actual kidnappers, and subsequently tried and convicted them. The extradition of the kidnappers from Florida to Canada was upheld in U. S. courts. The Canadian court also applied civil remedies, and issued a separate judgment awarding damages specifically to Mrs. Jaffe because of the harm she suffered as a result of the tortious abduction and criminal kidnapping of her husband. The Respondents were afforded due process as defendants in the Canadian courts. Mrs. Jaffe brought this action in the Florida courts to enforce a valid Canadian judgment in favor of Mrs. Jaffe, not Mr. Jaffe.

Mrs. Jaffe has a fundamental right to have access to the courts, and not to be deprived of her liberty or property interests without due process of law. Access to the courts is a fundamental right. *Boddie v. Connecticut*, 401 U.S. 371 (1971). Mrs. Jaffe sought access to the courts to vindicate her own individual rights. When Mr. Jaffe was kidnapped Mrs. Jaffe was deprived of a fundamental right -- that of marital association.

The court has long recognized marital choice, privacy, and association as belonging to the realm of fundamental liberties. *Zablocki v. Redhail*, 434 U.S. 374, 383-384 (1978).

Zablocki cites the major cases, especially *Loving v. Virginia*, 388 U.S. 1, 12 (1967), and *Griswold v. Connecticut*, 381 U.S. 479, 486 (1965). The continued association of family members has also been recognized as meriting due process protection. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). *Moore v. East Cleveland*, 431 U.S. 494, 499 (1977).

The Canadian judgment awarded Mrs. Jaffe damages as a remedy for the violation of her individual rights. By wrongly refusing to enforce this judgment the Florida court has deprived Mrs. Jaffe of her liberty and property interests without due process of law.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be granted.

August 9, 1993

Respectfully submitted,

PAUL L. HOFFMAN
Counsel for Petitioner*
Ruth Jaffe

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*Counsel for Petitioner wishes to acknowledge the contributions of Joshua Friedes and Bruce Hall, law students at the University of Colorado School of Law and the University of Southern California Law Center, respectively, to the preparation of this brief.

APPENDIX A

IN THE DISTRICT COURT OF APPEAL
OF THE
STATE OF FLORIDA

FIFTH DISTRICT JULY TERM 1992

RUTH JAFFE,

Appellant,

v. CASE NO. 91-1918

HARDY M. SNOW, JR.
and ACCREDITED
SURETY & CASUALTY
COMPANY, INC.,

Appellees.
_____/

Opinion filed November 13, 1992

Appeal from the Circuit Court
for Orange County,
Rom W. Powell, Judge.

Steven L. Brannock, of Holland & Knight
Tampa, and Jenny Hatfield-Lyon, of
Davis, Ward & Beck, Toronto, Ontario,
for Appellant.

E. Thom Rumberger and Sharon L. Stedman,
of Rumberger, Kirk & Caldwell, Orlando,
for Appellees.

Raymond T. Elligett, Jr., of Schropp, Buell & Elligett, P.A., Tampa, for Amicus Curiae of the Government of Canada

M. Roy Goldberg, of Davis, Graham & Stubbs, Washington, D.C., for Amicus Curiae of the International Human Rights Law Group.

SHARP, W., J.

Ruth Jaffe appeals from a final summary judgment which denied her petition to recognize and enforce a large money judgment she obtained in Canada against Accredited Surety & Casualty Company, Inc., a Florida company, and its president, Hardy Snow, a Florida resident. The trial judge based his decision not to recognize and enforce the Canadian judgment on the sole ground that to do so would violate the public policy of Florida. We agree and affirm.

This is an unusually complicated case overlaid by a tide of other court proceedings in Florida, the United States federal courts and Canada.[1] Because the proper application of the public-policy bar to granting comity to the Canadian judgment turns on these unique facts and collateral court proceedings, we will recite them in some detail. We borrow in part from the

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[1] Jaffe v. Sanders, 463 So.2d 318 (Fla. 5th DCA 1984); Jaffe v. State, 438 So.2d 72 (Fla. 5th DCA), *rev. dismissed*, 436 So.2d 99 (Fla. 1983); State ex rel. Boyles v. Florida Parole and Probation Commission, 436 So.2d 207 (Fla. 1st DCA 1983); Accredited Sur. & Cas. Co., Inc. v. State, 418 So.2d 378 (Fla. 5th DCA 1982); Jaffe v. Smith, 825 F.2d 304 (11th Cir. 1987), Jaffe v. Grant, 793 F.2d 1182 (11th Cir.), *reh. denied*, 803 F.2d 1185 (11th Cir. 1986), *cert. denied*, 480 U.S. 931, 107 S.Ct. 1566, 94 L.Ed.2d 759 (1987); Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983); Jaffe v. Boyles, 616 F.Supp. 1371 (W.D.N.Y. 1985); Jaffe v. Miller, No. 6103/85 (Ontario Court - General Division Nov. 22, 1990); Jaffe v. Dearing, Nos. 5236/85 & 10453/86 (Ontario Court of Justice Nov. 14, 1991).

summary judgment entered below and recitations by other courts which have been called upon to deal with various phases of the Jaffe saga.

The trial judge found:

> In 1980, Sidney L. Jaffe ("Mr. Jaffe"), a U.S. citizen, was charged in the Circuit Court of Putnam County, Florida, with 28 counts of violations of the 'Florida Uniform Land Sales Practices Law,' section 498.033(31), Florida Statutes (1979). A violation of this statute is a felony crime. After his arrest, Mr. Jaffe posted a $137,500 bail bond written by Accredited in order to secure his release from jail, and immediately went to Canada where he and Mrs. Jaffe (Ruth) took up residence...

The copy of the bond in the record discloses that Sidney gave as his residence an address in San Francisco, California, and he pledged not to change his address without notice to Accredited. The bond contains the usual promise to appear in the Florida criminal case, and it also gives the surety the express right to apprehend, arrest, and surrender his principal to "the proper official at any time provided by law." This latter provision is consistent with case law in the United States, which permits a bondsman to take his principal by force from any place he is found, within the United States, back to the proper jurisdiction for trial.[2] Apparently the law of Canada is different from Florida's on this issue, and Accredited did not have common law authority to return Sidney from

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[2] See Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983); Ker v. People of State of Illinois, 119 U.S. 436, 7 S.Ct. 225, 30 L.Ed. 421 (1886).

Canada to Florida, under Canadian law. *Kear v. Hilton,* 699 F.2d. 181 (4th Cir. 1983).

But, we are getting ahead of the story:

> On the day he (Jaffe) was scheduled for trial, Mr. Jaffe failed to appear. A motion for continuance filed by his attorneys was denied, a warrant was issued for his arrest, and Accredited's bail bond was forfeited.[1] The prosecuting attorney then filed a criminal charge of Failure to Appear, section 843.15(1)(a), Fla.Stat. (1979). A violation of this statute is a felony crime. The prosecuting attorney subsequently made two applications to the Florida Governor seeking to extradite Mr. Jaffe from Canada, both of which applications were denied. The record does not show the basis for the denials.[2] Mr. Jaffe remained in Canada and 'exhibited a determination to remain there in violation of his undertaking to return to Florida to answer the charges.' *Kear* at 181, 182.
>
> Snow and Accredited then hired two professional bail recovery agents, Johnson and Kear, to go to Canada, apprehend Mr. Jaffe and surrender him to the Putnam County Sheriff, which they did.[3] Mr. Jaffe was tried, convicted, and sentenced on all 28 counts of Unlawful Land Sales Practices; however, his convictions and sentences were later reversed. His convictions and sentence for Failure to Appear was affirmed. *Jaffe I.* Contrary to plaintiff's assertion, the Unlawful Land Sales Practices charges were not 'unfounded.' As the District Court of Appeal made clear in *Jaffe II,* the reversals were not based upon insufficient evidence but rather upon the legal insufficiency of the charging document.

[1] Accredited paid the $137,500 to Putnam County. Upon Mr. Jaffe's return to custody there, $37,500 was remitted to Accredited. Putnam County kept the remaining $100,000.

[2] Unlawful Land Sales Practices and Failure to Appear are not among the extraditable offenses listed in the treaty between our two countries. *See* Art. 2 Treaty On Extradition Between the United States of America and Canada (1976) and annexed schedule, para s.1-30. Consequently, Canada would not have been obligated to surrender Mr. Jaffe on those charges, even if (a) formal extradition request had been made by the Florida Governor. [In *Jaffe v. Smith*, 825 F.2d 304 (11th Cir. 1987), the court said the extradition applications were disapproved because of improper "form."]

[3] The record does not reflect that the circumstances of Mr. Jaffe's apprehension by the bail recovery agents were aggravated. Using a ruse, the agents took Mr. Jaffe into their custody, placed him in mechanical restraints, transported him by automobile across the border into the United States, allowed him to telephone his son, then transported him by airplane to Florida and after landing, took him by automobile to the Putnam County Jail. *See Kear.*

Prior to the reversal of the land sales counts on appeal, Jaffe was indicted in Putnam County for organized crime charges in connection with the fraudulent land sales. After serving part of his time on the failure to appear crime, Jaffe was paroled. In 1983 he was again allowed to post a bond (for $150,000) to secure his return to trial on the organized crime

charges in Putnam County. *See Jaffe v. Smith*, 825 F.2d 304 (11th Cir. 1987).

Jaffe traveled back to Canada, but has not yet reappeared in Florida. The second bond was forfeited in 1985. He has not at this time been brought to trial on those charges.

> Safe beyond the borders of the United States:
> [i]n 1985, Mr. Jaffe and Mrs. Jaffe brought suit in the Supreme Court of Ontario, Canada, against Snow and Accredited and other defendants seeking money damages for Mr. Jaffe's tortious abduction.[4]
>
> Snow and Accredited appeared in the action through Canadian counsel, and after their motions to dismiss based on grounds of want of personal jurisdiction and *forum non conveniens* were denied, they declined to further defend the action. On November 22, 1990, the Canadian court entered a separate judgment in favor of Mrs. Jaffe only[5] against Snow and Accredited awarding her general damages in the amount of $25,000 Canadian dollars; special damages in the amount of $903,481.47 United States dollars and $88,293.56 Canadian dollars; prejudgment interest in the amount of $498,089.33 in United States dollars and $62,458.74 Canadian dollars the total amount to bear interest at the rate of 14% per annum.

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[4] In paragraphs 62 and 63 of her Complaint in the Canadian action, Mrs. Jaffe alleged the following damage elements: loss of consortium; mental and physical suffering; loss of income; expenditure of time and effort in an effort to redress the wrongful actions of the defendants and in the administration of her husband's affairs, expenses in visiting and obtaining her husband's release from his wrongful imprisonment.

[5] Curiously the record does not reflect that a judgment was entered in favor of Mr. Jaffe.

The two bondsmen or "recovery agents", Kear and Johnson, were extradited to Canada to stand trial on kidnapping charges. *Kear*. That court applied to this saga the "old adage that two wrongs do not make a right." *Kear* They were convicted and sentenced to "time served."

All parties in this case agree that other possible defenses to the recognition and enforcement of the Canadian judgment, such as lack of personal jurisdiction, or due process have not been sufficiently established by this record to support the summary judgment in Accredited's and Snow's favor. Thus this appeal stands or falls on the public policy grounds enunciated by the trial court.

As the trial judge stated, recognition and enforcement of a foreign country's judgment in Florida is a matter of "comity," and it is up to the courts of this state to make that determination in each particular case.[3] Recognition is not required by the Full Faith and Credit Clause of the Federal Constitution,[4] which is applicable to sister-state and United States territories' court judgments.[5]

Comity is therefore a more flexible concept than is required by the Full Faith and Credit Clause,[6] although Florida in the overwhelming number of cases, recognizes and

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[3] Ogden v. Ogden, 159 Fla 604, 33 So.2d 870 (1947); Hilton v. Guyot, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895); Hilarion Llanes, *Foreign Nation Judgments*, 31 U.Fla.L.Rev. 588, 591 (1979).

[4] U.S.Const. Art. IV, §1.

[5] Parker v. Parker, 155 Fla. 635, 21 So.2d 141, *cert. denied.* 326 U.S. 718, 66 S.Ct. 23, 90 L.Ed.2d 425 (1945).

[6] *See* Beckwith v. Bailey, 119 Fla. 316, 161 So. 576 (1935).

enforces the judgments of other nations.[7] This is particularly true of countries having a system of jurisprudence which has developed from the same historical roots as our own, such as Canada.[8]

However, no jurisdiction will give comity to the judgment of another nation that offends that jurisdiction's public policy and sense of moral justice.[9] In this case, had Sidney Jaffe sought to enforce a Canadian judgment against his surety in this state, there are many public policy reasons why a Florida court would refuse to recognize and enforce it, which go far beyond the fact that the law of Canada (bounty hunters cannot single-handedly arrest and return a bond-jumper to the court which accepted the bond) is different than Florida's law.

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[7] *See* Pawley v. Pawley, 46 So.2d 464 (Fla), *rev. denied*, 47 So.2d 546, *cert. denied.* 340 U.S. 866, 71 S.Ct. 90, 95 L.Ed.2d 632 (1950).

[8] *See* Willson v. Willson, 55 So.2d 905 (Fla. 1951); Clarkson Co., Ltd. v. Shaheen, 544 F.2d 624 (2d Cir. 1976).

[9] The Restatement (Second) of the Foreign Relations Law of the United States §482 (1987) provides as follows:

> (2) A court in the United States need not recognize a judgment of the court of a foreign state if:
>
> ***
>
> (d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought...

See also Hilton v. Guyot, 159 U.S. at 164-167; Al-Fassi v. Al-Fassi, 433 So.2d 664 (Fla 3d DCA 1983), rev. denied, 446 So.2d 99 (Fla 1984).

See Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983) and *In re Walton*, 11 O.L.R. 94 (1905).

For one, Sidney Jaffe is a fugitive from justice in the eyes of the Florida courts, having "jumped bond" in this jurisdiction not once, but twice. And, there are still criminal charges pending against him in this state from which he has fled rather than faced. Simply stated, "a fugitive from justice is not entitled to call upon the resources of court for determination of his case." *Garcia v. Metro-Dade Police Department*, 576 So.2d 751, 752 (Fla. 3d DCA 1991); *United States v. One Lot of U.S. Currency Totalling $506,537*, 628 F.Supp. 1473, 1475 (S.D. Fla. 1986). Stated another way, a fugitive from justice "cannot eat his cake and have it too." *United States v. Eng*, 951 F.2d 461, 462 (2d Cir. 1991).

The United States Supreme Court and the Florida Supreme Court have long held that courts may dismiss the appeals of criminal defendants who flee the jurisdiction while their appeals are pending. *Molinaro v. New Jersey*, 396 U.S. 365, 90 S.Ct. 498, 24 L.Ed.2d 586 (1970); *State v. Gurican*, 576 So.2d 709 (Fla. 1991). In *Molinaro*, the court held that while an escape does not strip the case of its character as an adjudicable case or controversy, the escape "disentitles" the defendant to call upon the resources of the court for determination of his claims. 90 S.Ct. at 498-499.

The federal appeals courts have extended the fugitive from justice doctrine beyond the facts of *Molinaro*. *See, e.g., United States ex rel. Bailey v. U.S. Commanding Officer of the Office of the Provost Marshal, U.S. Army*, 496 F.2d 324 (1st Cir. 1974) (soldier who was AWOL several times was not entitled to petition for habeas corpus relief); *Doyle v. United States Department of Justice*, 668 F.2d 1365 (D.C. Cir 1981), *cert. denied*, 455 U.S. 1002, 102 S.Ct. 1636, 71 L.Ed.2d 870 (1982) (fugitive from federal court processes could not pursue his lawsuit based on the Freedom of Information Act); *United States v. Conforte*, 624 F.2d 869 (9th Cir.), *cert. denied*, 449 U.S. 1012, 101 S.Ct. 568, 66 L.Ed.2d 470 (1980) (fugitive from justice on convictions for willfully attempting to evade

federal employment taxes was not entitled to appeal a Tax Court determination); *Schuster v. United States*, 765 F.2d 1047 (11th Cir. 1985) (fugitive from justice in a related criminal case was not entitled to seek review of a tax assessment made by the Internal Revenue Service).

The fugitive from justice doctrine has also been applied to bar criminal defendants from asserting or defending a claim in related civil forfeiture proceedings. *See, e.g., Garcia* (appeal from order permitting forfeiture of currency dismissed where appellant was a fugitive from the related criminal charges); *United States v. Eng* (defendant was disentitled from contesting a civil forfeiture proceeding involving real property if he continued to fight extradition which would return him to the United States to face criminal charges pending against him); *United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane, Miami, Dade County, Florida*, 868 F.2d 1214 (11th Cir. 1989) (record owner of property seized by the government was not entitled to pursue a claim to the property where he was currently residing in Columbia and was avoiding criminal prosecution in the United States); *United States v. Forth-Five Thousand Nine Hundred Forty($45,940) in United States Currency*, 739 F.2d 792 (2d Cir. 1984) (Canadian who refused to appear at his arraignment on criminal charges in the United States on the ground that his appearance would be in violation of the immigration laws was not entitled to pursue his claim in related forfeiture proceeding); *United States v. Certain Real Property Located at 760 S.W. 1st Street, Miami, Florida*, 702 F.Supp. 575 (W.D.N.C. 1989) (claimant who was avoiding arrest on drug charges was not entitled to pursue his claims in related civil forfeiture proceedings); *United States v. One Lot of U.S. Currency Totalling $506,537* (claimant living in Aruba to avoid arrest on currency violation charges in the United States was not entitled to assert an interest in the money in the civil forfeiture action).

In *Garcia*, the court dismissed the appeal from a forfeiture order because the appellant failed to appear for his trial on the related criminal charges:

> Appellant, on the one hand, wields a sword against our judicial system by escaping criminal prosecution. On the other hand, appellant attempts to shield himself with the protection of his rights in the civil courts.

576 So.2d at 752. Finding this duplicitous approach "repugnant to our inherent sense of equity," the court adopted the federal fugitive from justice doctrine. 576 So.2d at 752. This echoes the sentiment expressed in *United States v. One Lot of U.S. Currency Totalling $506,537*:

> By way of providing context, this court notes that claimant's conduct is inherently inequitable. Claimant has taken advantage of the rights accorded litigants--but wants to avoid the Court's processes as a sword while attempting to simultaneously shield himself from the same type of judicial process. This type of conduct is, simply stated, unfair.

628 F.Supp. at 1476.

Secondly, persons who flaunt the orders of courts in this state will suffer their cases to be dismissed. For example, Florida courts have held that a party adjudged in contempt for disobeying an order of the trial court in the cause appealed from is not entitled to maintain the appeal until he has purged himself of the contempt. *Pasin v. Pasin*, 517 So.2d 742 (Fla. 4th DCA 1987), *rev. denied*, 528 So.2d 1183 (Fla. 1988); *In re Guardianship of Crawford*, 470 So.2d 816 (Fla. 1st DCA 1985); *Durham v. Durham*, 297 So.2d 857 (Fla. 4th DCA 1974); *Morris v. Rabara*, 145 So.2d 265 (Fla. 2d DCA 1962). As the court in *Morris* noted, "it is contrary to the principles of justice to permit one who has flaunted the orders of the court to demand judicial assistance. An appellate court is authorized to enforce an order made by the lower court and

which has been violated by a party to the proceedings." 145 So.2d at 267.[10]

Other jurisdictions similarly dismiss an appeal when the appellant is in contempt of the lower court. *See, e.g., Stone v. Bach,* 80 Cal.App.3d, 442, 145 Cal.Rptr. 599 (1978); *Steward v. Stewart,* 91 Ariz. 356, 372 P.2d 697 (1962). In *Steed v. Woods,* 475 S.W.2d 814 (Tex.App. 1972), the court dismissed the former wife's appeal from one order where she was in contempt for violating another order arising out of the same divorce action.

A party in contempt is likewise not entitled to a hearing or a trial of his cause out of which the contempt arose until he purges himself of the contempt. In *Palm Shores, Inc. v. Nobles,* 149 Fla. 103, 5 So.2d 52 (1941), the court held that the plaintiff had been properly head in contempt for failure to respond to interrogatories propounded by the defendant. The court also held that an outright dismissal with prejudice of the plaintiff's cause of action was too severe a sanction and denied due process of law. However, the court indicated that abatement of the proceedings until the plaintiff purged himself of the contempt would be proper. When it is the defendant who is in contempt, the court may refuse to consider his defenses until he has purged himself of the contempt by complying with the court's order. *Whiteside v. Whiteside,* 468 So.2d 407 (Fla. 4th DCA 1985). The courts may also refuse to consider a motion for modification filed by the party in contempt. *Pollock v. T. & M. Investments, Inc.,* 420 So.2d 99 (Fla. 3d DCA 1982), *rev. denied,* 430 So.2d 452 (Fla. 1983). *Accord Hilson v. Hilson,* 598 So.2d 955 (Ala.Civ.App. 1992); *Jones v. Hargrove,* 516 So.2d 1354 (Miss. 1987).

The courts have also declined to exercise jurisdiction where the plaintiff or petitioner is in contempt. *See, e.g.,*

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[10] *See also* Bronk v. Bronk, 46 Fla. 474, 35 So. 870 (1903) (court declined to review appeal from husband in divorce proceedings who was in contempt of court by escaping from custody of the sheriff).

Mondy v. Mondy, 428 So.2d 235 (Fla. 1983). In *Mondy*, the mother sought modification of an Idaho divorce decree to give her custody of the parties' children. The mother, however, had been held in contempt of the Idaho court for taking the children in violation of its custody order. The Florida Supreme Court held that Florida should not have exercised jurisdiction in this cause because the Idaho court had jurisdiction of the custody proceeding and because the mother had violated the "clean hands" provision of the Uniform Child Custody Jurisdiction Act.

Finally, Florida has a well-established public policy that our courts will not permit nor tolerate a person to benefit from his own wrongful act.[11] In this case, Sidney Jaffe breached his contract or bond given to Accredited and accepted by the Florida court that he would not leave his California residence without Accredited's permission, and that he would return promptly to face the criminal charges brought against him. *See Reese v. United States*, 76 U.S. 13, 19 L.Ed. 541, 9 Wall. 13 (1869). He failed to do so. Although his eventual forceful return by Accredited was wrongful in Canada's eyes, he, too, was at fault for not honoring his bond. Two wrongs do not make a rights, and neither wrongdoer should profit. *McMichael v. McMichael*, 158 Fla. 413, 28 So.2d 692 (1947).

Ruth Jaffe argues she should not be placed in her husband's shoes for purposes of recognition and enforcement of her judgment. However, the nature of her cause of action is derivative[12] and it was necessarily born out of Sidney

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[11] Ashwood v. Patterson, 49 So.2d 648 (Fla. 1951).

[12] "Derivative" is defined as "coming from another; taken from something proceeding... that which has not its origin in itself, but owes its existence to something foregoing. Anything obtained or deduced from another." Black's Law Dictionary 399 (5th ed. 1979).

Jaffe's tort suit for wrongful kidnapping.[13] She was not kidnapped. Sidney was. Any loss of consortium on her part is deemed to be a derivative cause of action in Florida.[14]

The fugitive from justice doctrine bars any claim or defense that is solely derivative of the fugitive's claim. *United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane,* 868 F.2d at 1217 n.5; *United States v. $129,374 in United States Currency,*769 F.2d 583 (9th Cir. 1985), *cert. denied,* 474 U.S. 1086, 106 S.Ct. 868, 88 L.Ed.2d 901 (1986). In *$129,374 in United States Currency,* Gerald Geiger had been appointed conservator of his brother Lewis' estate and attempted to intervene in forfeiture proceedings involving property belonging to Lewis, who was a fugitive on the related criminal charges. The court held that if Lewis, as a fugitive from justice, were deprived of presenting any claim or defense in the action as a result of his fugitive status, the conservator of his estate must likewise suffer the same consequences when he seeks to advance the same claim or defense.

Here, Jaffe fled the jurisdiction of Florida in his land fraud case and did not appear at his second fraud trial. The fugitive from justice doctrine would bar any of Jaffe's claims for damages from his return to Florida by his bondsmen. Mrs. Jaffe's claims are derivative of her husband's and likewise are barred under the fugitive from justice doctrine.

Further, if Ruth Jaffe is allowed to recover the expenses and claims she sought and obtained in the Canadian judgment, it would permit her to profit from a wrongdoer's activity. The expenses of retaining counsel to defend Sidney

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[13] In her brief, Ruth Jaffe admits that her damages are those caused by the kidnapping of her husband by Snow and Accredited.

[14] *See* Ryter v. Brennan, 291 So.2d 55 (Fla. 1st DCA), *cert. denied,* 297 So.2d 836 (Fla. 1974) (even though a wife's consortium action is her own property right, the action is dependent upon proof of negligence on the part of the defendant and in that sense, is derivative from her husband).

in Florida and her visitation in Florida should rightfully have been spent, because Sidney should rightfully have returned to this jurisdiction to stand trial. To allow her to collect on any of these items as "damages" would be to reward the bondjumper. In addition, any loss of consortium on her part was in the eyes of the Florida courts a rightful loss, because Sidney should have rightfully been separated from her while he stood trial and served time in prison after his conviction. Her loss of consortium was thus the consequence of her husband's own wrong and she should not be allowed to benefit from it. *See Ashwood v. Patterson,* 49 So.2d 848 (Fla. 1951).

Accordingly, we affirm the judgment below refusing to recognize and enforce Ruth Jaffe's Canadian judgment.

AFFIRMED.

DAUKSCH and DIAMANTIS, JJ., concur.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT

RUTH JAFFE,
Appellant,

v. CASE N. 91-1918

HARDY M. SNOW, JR., and ACCREDITED SURETY & CASUALTY COMPANY, INC.,
Appellee.
_____/

DATE: January 12, 1993

BY ORDER OF THE COURT:

ORDERED that Appellant's MOTION FOR REHEARING, REHEARING EN BANC OR FOR CERTIFICATION OF QUESTIONS OF GREAT PUBLIC IMPORTANCE, filed November 30, 1992, is denied.

I hereby certify that the foregoing is
(a true copy of) the original court order.

/s/
FRANK J. HABERSHAW, CLERK

BY: _____
Deputy Clerk

(COURT SEAL)

APPENDIX C

SUPREME COURT OF FLORIDA

MONDAY, MAY 10, 1993

RUTH JAFFE,	*	
	*	CASE NO. 81,267
Petitioner,	*	
	*	DISTRICT COURT OF
v.	*	APPEAL, 5TH
	*	DISTRICT NO. 91-1918
HARDY M. SNOW,	*	
JR., ET AL.,	*	
	*	
Respondents.	*	
	*	

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

OVERTON, MCDONALD, SHAW, GRIMES and HARDING, JJ., concur

APPENDIX D

IN THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. CI 91-1593

RUTH JAFFE,

Plaintiff,

vs.

HARDY M. SNOW, JR., and
ACCREDITED SURETY &
CASUALTY COMPANY, INC.,

Defendants.
_____/

FINAL SUMMARY JUDGMENT FOR DEFENDANTS

This is an action brought by Ruth Jaffe ("Mrs. Jaffe"), a Canadian resident, for recognition and enforcement of her Canadian money judgment against Hardy M. Snow, ("Snow") and Accredited Surety & Casualty Company, Inc. ("Accredited"), a citizen and resident of the State of Florida and a Florida corporation having its principal place of business in Orange County, Florida.

This case came on for hearing on June 24, 1991, on the parties' cross motions for summary judgment. The Court reviewed the pleadings, the Canadian judgment and complaint and the motions; listened carefully to the arguments of counsel; has read the legal memoranda furnished and studied many of the authorities cited therein, and has given the case careful consideration.

Under Florida law, a party may be granted a summary judgment if there is no genuine issue of material fact as demonstrated by the record made for the summary judgment hearing and such party is entitled to judgment as a matter of law on the undisputed material facts. Fla.R.Civ.P. 1.510(c); Carpineta v. Shields, 70 So.2d 573 (Fla. 1954). Since Florida courts have granted summary judgment enforcing foreign nation judgments, see e.g., Willson v. Willson, 55 So.2d 905 (Fla. 1952); Mathor v. Lloyds Underwriters, 174 So.2d 71 (Fla. 3rd DCA 1965); Bullen v. Her Majesty's Govt. of the U.K., 553 So.2d 1344 (Fla. 4th DCA 1989), rev. den. 567 So.2d 434 (Fla. 1990), it follows that summary judgment can be granted refusing to enforce such a judgment in a proper case. Indeed, plaintiff states that "(a)ll the parties agree that the question of enforcement of Mrs. Jaffe's Canadian judgment is a matter of law for the Court." (plaintiff's supporting memorandum, p.2)

For the purpose of stating the undisputed material facts in this judgment, this Court has relied upon portions of plaintiff's complaint, motion, supporting memorandum, appendices and facts appearing in three reported appellate opinions: Jaffe v. State, 438 So.2d 72 (Fla. 5th DCA 1983) ("Jaffe I"); Jaffe v. Sanders, 463 So.2d 318 (Fla. 5th DCA 1985) ("Jaffe II"); and Kear v. Hilton, 699 F.2d 181 (4th Cir. 1983).

The material undisputed facts necessary for the disposition of the cross motions are as follows. In 1980, Sidney L. Jaffe ("Mr. Jaffe"), a U.S. citizen, was charged in the Circuit Court of Putnam County, Florida, with 28 counts of violations of the "Florida Uniform Land Sales Practices Law", Section 498.033(3), Florida Statutes (1979). A violation of this statute is a felony crime. After his arrest, Mr. Jaffe posted a $137,500.00 bail bond written by Accredited in order to secure his release from jail, and immediately went to Canada where he and Mrs. Jaffe took up residence. On the day he was scheduled for trial, Mr. Jaffe failed to appear. A motion for continuance filed by his attorneys was denied, a warrant was

issued for his arrest, and Accredited's bail bond was forfeited.[1] The prosecuting attorney then filed a criminal charge of Failure to Appear, Section 843.15(1)(a), Fla. Statutes (1979). A violation of this statute is a felony crime. The prosecuting attorney subsequently made two applications to the Florida Governor seeking to extradite Mr. Jaffe from Canada, both of which applications were denied. The record does not show the basis for the denials.[2] Mr. Jaffe remained in Canada and "exhibited a determination to remain there in violation of his undertaking to return to Florida to answer the charges." Kear at 181,2.

Snow and Accredited then hired two professional bail recovery agents, Johnson and Kear, to go to Canada, apprehend Mr. Jaffe and surrender him to the Putnam County Sheriff, which they did.[3] Mr. Jaffe was tried, convicted, and sentenced on all 28 counts of Unlawful Land Sales Practices; however, his convictions and sentences were later reversed. His conviction and sentence for Failure to Appear was affirmed. Jaffe I. Contrary to plaintiff's assertion, the Unlawful Land Sales Practices charges were not "unfounded". As the District Court of Appeal made clear in Jaffe II, the reversals were not based upon insufficient evidence but rather upon the legal insufficiency of the charging document.

Immediately upon his release from imprisonment, Mr. Jaffe returned to Canada. In 1985, Mr. Jaffe and Mrs. Jaffe brought suit in the Supreme Court of Ontario, Canada, against Snow and Accredited and other defendants seeking money damages for Mr. Jaffe's tortious abduction.[4] Snow and Accredited appeared in the action through Canadian counsel, and after their motions to dismiss based on grounds of want of personal jurisdiction and forum non conveniens were denied, declined to further defend the action. On November 22, 1990, the Canadian court entered a separate judgment in favor of Mrs. Jaffe only[5] against Snow and Accredited awarding her general damages in the amount of $25,000 Canadian dollars; special damages in the amount of $903,481.47 U.S. dollars and $88,293.56 Canadian dollars; pre-judgment interest in the

amount of $498,089.33 U.S. dollars and $62,458.74 Canadian dollars, the total amount to bear interest at the rate of 14% per annum.

Turning now to the law, this Court concludes that there are no treaties or statutes, state or federal, which compel the courts of Florida to recognize foreign nation judgments, nor does the full faith and credit clause of the United States Constitution require it. Rather, recognition or nonrecognition of such judgments in this state depends upon Florida common law principles of judicial comity. Warren v. Warren, 75 So.35 (Fla. 1917); Parker v. Parker, 21 So.2d 141 (Fla. 1945); Ogden v. Ogden, 33 So.2d 871 (Fla. 1947); Pawley v. Pawley, 46 So.2d 464 (Fla. 1950).

In Beckwith v. Bailey, 161 So. 577, 581 (Fla. 1935), the Florida Supreme Court, citing the leading United States Supreme Court case of Hilton v. Guyot, 159 U.S. 113, 16 S.Ct 139, 40 L.Ed. 95 (1895), recognized that "...comity...(in the legal sense) is neither a matter of absolute obligation or of mere courtesy and good will. It is...the recognition which one nation or state allows within its territory to the ...judicial acts of another nation or state, having due regard to both international duty and convenience, and to the rights of its own citizens...."

In Warren, the Florida Supreme Court adopted the general statement of conditions for recognition enunciated in Hilton, which are that "(t)here has been full opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of law under which it is sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect...." Warren, 75 So. at 44; Hilton, 159 U.S. at 202-03 (emphasis supplied).

Quoting with approval from several treatises, the Hilton court recognized the principles that "'(e)very nation must be the final judge for itself, not only of the nature and extent of the duty (to give effect to foreign nation judgments), but of the occasions on which its exercise may be justly demanded'", 159 U.S. at 190; and that "'...the tribunal in which the suit is brought, or from which execution is sought, is, on principle, at liberty to examine into the merits of such judgment, and to give effect to it or not, as many be found just and equitable'." Id.

Defendants concede the authenticity of the Canadian judgment and compliance with due process conditions leading to its rendition. They do not claim prejudice or fraud. However, they raise several defenses, although inartfully, none of which have merit[6] save one--that Mrs. Jaffe's judgment should be refused recognition on public policy grounds.

Under Florida common law, the doctrine of comity precludes recognition of a foreign nation judgment where "special reasons" exist. Hilton. One of those special reasons is that such a judgment is contrary to the public policy of Florida. Id. A foreign nation judgment may be contrary to a state's public policy if it conflicts with the state's interests, is inconsistent with its laws and/or is repugnant to fundamental notions of what is decent, equitable and just in the forum state. Id. See also Ackerman v. Levine, 788 F.2d 830, 841-2 (2d Cir. 1986) ("A judgment is unenforceable as against public policy to the extent that is it 'repugnant to fundamental notions as to what is decent and just in the State where enforcement is sought.'") Tahan v. Hodgson, 662 F.2d 862, 864 (D.C.Cir. 1981); Restatement 2d Conflict of Laws, Sec. 117 comment c (1971);Reese, Judgments Rendered Abroad, 50 Columbia L. Rev. 783, 797 (1950) ("...(o)ur courts should not be required to enforce a judgment based upon a cause of action which offends against our notions of what is decent and just, or which offends against our laws").

Two cases have been cited from time to time by courts and commentators as examples of the application of these

principles. In De Briemont v. Penniman, 7 Fed. Cas. 309, No.3, 715 (C.C.S.D.N.Y. 1873), a Federal Circuit Judge refused to enforce a French decree requiring a U.S. citizen to support his adult French son-in-law. In In re: Estate of Davis, 219 N.Y.S.2d 533 (Sup. Ct. 1961), affirmed 227 N.Y.S.2d 894 (1962), the New York Court denied recognition to an Italian judgment which contravened a New York statute disallowing entry of judgments against persons who died during the litigation.

Canadian tort law under which Mr. and Mrs. Jaffe's causes of action were brought is different from Florida law. Both under the common law and statutory law of this state, a surety such as Accredited may arrest the principal within the state, both before and after the forfeiture of a bail bond. Register v. Benton, 73 So.2d 187 (Fla. 1975); Sections 903.02 and .29, Florida Statutes (1979). Under Florida common law, the surety may delegate to another person the right to make the arrest (but if the surety delegates a law enforcement officer, then the procedure set forth in Section 903.29 must be followed). Register. "One under bail is in the vicarious custody of his bondsman whose 'dominion is a continuance of the original imprisonment, and the principal may be apprehended by .his bondsman even under extreme circumstances.' Taylor v. Taintor, 16 Wall 366 83 U.S. 366, 21 L.Ed. 2d 287...." Id. at 188. Consequently, had the apprehension of Mr. Jaffe by defendants' bail recovery agents occurred within the territorial boundaries of Florida, Mr. and Mrs. Jaffe would have had no cause of action under the tort law of this state. Of even more significance, the public policy of Florida as expressed through its decisional and statutory law expressly favors and sanctions the apprehension of a bond jumper within the state by his surety or its agent.

Furthermore, Mr. Jaffe's act of failing to appear in court was a breach of his contractual obligation to Accredited under their bail agreement and a crime against the State of Florida for which he was duly convicted. it was his wrongful criminal act in jumping bail which directly caused Snow and

Accredited to commit the acts found to be tortious in Canada which formed the basis for Mr. and Mrs. Jaffe's Canadian action against them. If Mr. Jaffe had obtained and sought to enforce a Canadian judgment against defendants here, to allow it would not only be inconsistent with this State's interests but patently inequitable, for Equity says that "no one shall be permitted to take advantage of his own wrong, or found any claim upon his own inequity, or profit from his own crime." Ashwood v. Patterson, 49 So.2d 848, 850 (Fla.1951).

Finally, since under principles of comity public policy reasons would foreclose enforcement of any judgment Mr. Jaffe has obtained or might obtain in the Canadian action, it logically follows that the same is true of Mrs. Jaffe's judgment. This is so because the claim upon which it was based was intertwined with, solely derivative of and utterly dependent upon that of her husband. And if she were to collect all or a part of her judgment through the processes of this Court, he would stand to benefit, even if only indirectly.

In closing it should be stated that nothing in this judgment should be construed as condoning the acts of Snow and Accredited and their agents which caused the events in Canada. Now that the Kear case is on the books, the criminal laws of Canada and the extradition treaty between our two countries should provide a sufficient deterrent against that type of activity in the future. This Court agrees with the suggestion of Judge Murnaghan in Kear that it might be profitable to pursue through diplomatic and political channels a system of cooperation between officials of our two countries for the return of all American bail jumpers. Finally, lest it be thought otherwise, this Court has the utmost respect for the nation of Canada, its laws, its jurists and its legal system, and only holds that because of the peculiar facts and circumstances of this case, it falls within those very few exceptions where an American state court should decline to enforce a foreign nation's judgment.

Accordingly, based upon all of the foregoing, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff's Motion for Summary Judgment is denied.

2. Defendants' Motion for Summary Judgment is granted, and Final Summary Judgment is hereby entered in favor of defendants Hardy M. Snow and Accredited Surety and Casualty Company, Inc. Plaintiff will take nothing by this action and go hence without day. Defendants shall recover their taxable costs, if any.

3. Both parties' motions for attorney's fees and other pending motions are denied.

DONE and ORDERED in chambers at Orlando, Orange County, Florida, This 26 day of July, 1991.

/s/ Rom W. Powell
CIRCUIT JUDGE

1. Accredited paid the $137,500 to Putnam County. Upon Mr. Jaffe's return to custody there, $37,500 was remitted to Accredited. Putnam County kept the remaining $100,000.

2. Unlawful Land Sales Practices and Failure to Appear are not among the extraditable offenses listed in the treaty between our two countries. See Art. 2, Treaty on Extradition Between the United States of America and Canada (1971) and Annexed Schedule, para.s 1-30. Consequently, Canada would not have been obligated to surrender Mr. Jaffe on those charges even if formal extradition request had been made by the Florida Governor.

3. The record does not reflect that the circumstances of Mr. Jaffe's apprehension by the bail recovery agents were aggravated. Using a ruse, the agents took Mr. Jaffe into their custody, placed him in

mechanical restraints, transported him by automobile across the border into the United States, allowed him to telephone his son, then transported him by airplane to Florida and after landing, took him by automobile to the Putnam County Jail. See Kear.

4. In paragraphs 62 and 63 of her Complaint in the Canadian action, Mrs. Jaffe alleged the following damage elements: loss of consortium; mental and physical suffering; loss of income; expenditures of time and effort in an "effort to redress the wrongful actions of the defendants" and in the administration of her husband's affairs; expenses in visiting and obtaining her husband's release from his wrongful imprisonment.

5. Curiously, the record does not reflect that a judgment was entered in favor of Mr. Jaffe.

6. Defendants' "two dismissal" defense cannot be maintained for the simple reason that Mrs. Jaffe was not a co-plaintiff with Mr. Jaffe in one of the two federal suits which were voluntarily dismissed, and even if she had been a co-plaintiff in both, those two suits were based upon alleged violations of the Federal Civil Rights Act and other tort claims, whereas the complaint herein is based upon a claim for recognition of a foreign nation judgment, an entirely different claim.

APPENDIX E

Court File No. 6103/85

ONTARIO COURT (GENERAL DIVISION)

THE HONOURABLE MR. JUSTICE MATLOW	)))	THURSDAY, THE 22ND DAY OF NOVEMBER, 1990

BETWEEN:

SIDNEY L. JAFFE and RUTH JAFFE

Plaintiffs

- and -

JOE C. MILLER, II, METROPOLITAN TORONTO CONDOMINIUM CORPORATION NO. 539, DANIEL J. KEAR, FRANCES L. CILES, HANK M. SNOW, JR., WILLIAM HATCH, LOUIS R. STARK, CLYDE E. SHOEMAKE, STEPHEN L. BOYLES, ACCREDITED SURETY & CASUALTY CO., TERRENCE SCHMIDT, CHARLES W. GRANT, PATRICIA SILVER, THE ATTORNEY GENERAL OF THE STATE OF FLORIDA, FLORIDA BOARD OF RISK MANAGEMENT, ORMARK ENTERPRISES LIMITED, PUTNAM COUNTY FLORIDA, SMITH HANDLER, SMITH, WERNER JACOBOWITZ & FRIED P.A. KELLY SMITH, CHARLES BAIRD, GARY KELLER, BONNIE ALLENDER, JOHN EUBANKS, TIMM JOHNSON, GLENN E. NORRIS

Defendants

JUDGMENT

This motion made by plaintiff, Ruth Jaffe, for final judgment against the defendants, Accredited Surety & Casualty Co. ("Accredited"), and Hank M. Snow, Jr. ("Snow"), having been noted in default on July 3, 1990, was heard this day at Osgoode Hall Toronto, Ontario.

ON READING the notice of motion dated November 20, 1990, the notice of action dated September 20, 1985, the statement of claim dated October 21, 1985 the order of Master Garfield dated August 4, 1989 and the order of Master Sirois dated April 4, 1990, which orders confirmed the jurisdiction of this Honourable Court over, *inter alia,* the defendants Accredited and Snow in this action, the proof of service of the statement of claim, filed, and upon reading the affidavit of Ruth Jaffe and exhibits annexed thereto sworn October 2, 1990 and the affidavits of Sidney L. Jaffe and exhibits annexed thereto, each sworn on November 19, 1990, and upon hearing the submissions of counsel for the plaintiffs;

1. THIS COURT ORDERS that Accredited and Snow pay Ruth Jaffe general damages in the amount of $25,000.00 Canadian Dollars.

2. THIS COURT ORDERS that Accredited and Snow pay Ruth Jaffe special damages in the amounts of $903,481.47 United States Dollars, in accordance with Section 131 of the Courts of Justice Act, and $88,293.56 Canadian Dollars.

3. THIS COURT ORDERS that Accredited and Snow pay Ruth Jaffe pre-judgment interest pursuant to Section 138 of the Courts of Justice Act on the damages provided in paragraphs 1 and 2 herein, from April 11, 1986 to this date, in the amount of $498,089.33 United States Dollars, in accordance with Section 131 of the

Courts of Justice Act, as amended, and $62,458.74 Canadian Dollars.

5. THIS COURT ORDERS that Accredited and Snow pay Ruth Jaffe the costs of this motion fixed at $2,000.00 Canadian Dollars.

THIS JUDGMENT BEARS INTEREST at the rate of 14 per cent per year commencing on this date.

Entered at Toronto
In film No. 830
ON: 28 11 1990
As document No. 86

APPENDIX F

IN THE FIFTH DISTRICT COURT OF APPEAL
DAYTONA BEACH, FLORIDA

RUTH JAFFE,
Appellant,

vs.

CASE NO. 91-1918

HARDY M. SNOW, JR.,
and ACCREDITED
SURETY CASUALTY
COMPANY, INC.,
Appellees.
_____/

THE GOVERNMENT OF CANADA'S AMICUS BRIEF

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INTEREST OF THE AMICUS CURIAE

The trial court's summary judgment was purportedly based on the public policy of Florida in relation to an act in Canada that constituted both a breach of Canada's criminal law and a breach of international law. The Government of Canada submits that the interpretation of Florida public policy in the summary judgment is contrary to the public policy of the United States as evidenced in the January 11, 1988 Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending the Treaty on Extradition. The Government of Canada also submits that it is not Florida policy to sanction criminal acts and breaches of international law whether they take place in Florida or in a foreign country such as Canada.

STATEMENT OF THE CASE AND FACTS

Mrs. Jaffe sued the Defendants in the Supreme Court of Ontario, seeking damages in connection with expenses incurred following the wrongful abduction of Sidney Jaffe from Canada to the United States by United States bounty hunters hired by the Defendants. On November 22, 1990, the Supreme Court of Ontario found in favor of Ruth Jaffe and awarded her a money judgment (R-103).[15]

Mrs. Jaffe then brought this action in the Ninth Judicial Circuit in and for Orange County, Florida, seeking recognition and enforcement of the judgment rendered by the Supreme Court of Ontario, and the Defendants defended the action. The trial court entered summary judgment in favor of the Defendants. Mrs. Jaffe appeals that ruling to this Court.

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[15] For the purpose of this amicus brief, the Government of Canada relies on the facts set forth in the summary judgment (at R 100-110), unless otherwise noted.

ISSUE ON APPEAL

THE GOVERNMENT OF CANADA'S POSITION ON CANADA - UNITED STATES RELATIONS.

SUMMARY OF ARGUMENT

There is no dispute as to the validity and conclusiveness of the judgment of the Supreme Court of Ontario in favor of Mrs. Jaffe. The issue on appeal is whether it offends public policy to enforce the money judgment that was properly awarded to Mrs. Jaffe by the Supreme Court of Ontario. In other words, would enforcement be so abhorrent as to offend the sensibilities or morality of the forum if Mrs. Jaffe were able to collect in Florida on a money judgment rendered in accordance with the applicable law in a court of competent jurisdiction of a province of Canada?

ARGUMENT

THE GOVERNMENT OF CANADA'S POSITION ON CANADA - UNITED STATES RELATIONS.

The Government of Canada's participation is based in part on the United States' position on the issue of transborder bounty-hunting and the reliance Canada may place on the undertakings of the United States Government to deter such activities and to exert its best efforts to inform those engaged in transborder bounty-hunting that such activities are illegal and that offenders will be subject to extradition. It is also grounded in concerns about the effective implementation of the Canada-United States Extradition Treaty, and the apparent willingness expressed in the summary judgment to sanction its contravention.

The abduction of Sidney Jaffe from his home in Toronto, Canada to Florida by U.S. bounty-hunters hired by

the Defendants was a blatant infringement of Canadian territorial sovereignty and was contrary the Canada-United States Extradition Treaty and international law.

Transborder bounty-hunting has been condemned by the international community. It is the criminal offense of kidnapping in Canada, the United States and Florida; kidnapping is an extraditable offense in both countries.[16] The Canadian Government filed formal protests with the United States Government objecting to the abduction and demanding Mr. Jaffe's release.[17] The United States Department of Justice and the United States State Department condemned the abduction of Mr. Jaffe from Canada as a violation of United States public policy.[18]

The gravity of the incident was recognized by United States Secretary of State George Shultz in the following words.

> ...it is perfectly understandable that the Government of Canada is outraged by his alleged kidnapping, which Canada considers a violation of the treaty and of international law, as well as an affront to its sovereignty.[19]

Secretary of State Shultz recognized the serious effect of the kidnapping on Canada-United States relations. He said:

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[16] Extradition Treaty List, included as part of exhibit U to Plaintiff's trial memorandum.

[17] See exhibit J to Plaintiff's trial memorandum.

[18] See exhibit T to Plaintiff's trial memorandum.

[19] See exhibit I to Plaintiff's trial memorandum.

> ...the Jaffe case threatens to have a generally deleterious effect on our relations with Canada.[20]

And he stated the public policy of the United States in this matter as follows:

> It is simply in the national interest that this case no longer be permitted to intrude upon our relations with one of our most important and highly valued neighbors...[21]

Canada sought extradition of the bounty-hunters. The United States Government refused to excuse or exonerate the bounty-hunters and extradited them to Canada where they were tried and convicted.[22] Extradition to Canada from Florida was not denied by the United States Government or the Florida Courts because of any activities that may have been undertaken by Mr. Jaffe in Florida. The bounty-hunters hired by Defendants were convicted; no justification for their actions could be found by the court in any activities carried out by Mr. Jaffe in Florida.

The policy of the United States Government concerning transborder bounty-hunting is aptly demonstrated in the January 11, 1988 Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending

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[20] Id.

[21] Id.

[22] Kear v. Hilton, 699 F.2d 181, 185 (4th Cir. 1983); Johnson v. Kear, (Ont. H.C. June 9, 1986), affirmed, 5 C.C.C. (3d) 574 (Ont. C.A. 1989).

the Treaty on Extradition.[23] The Exchange of Letters, signed by the United Stated [sic] Secretary of State and the Canadian Secretary of State for External Affairs, reads in part as follows:

> The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail-bonding companies...is an extraditable offense under the United States-Canada Extradition Treaty.

Both countries agreed to take action against transborder bounty-hunting:

> ...Canada and the United States agree to cooperate to deter such transborder abductions...

Of particular relevance in this appeal is the undertaking made in the letter by the United States to Canada, which reads as follows:

> [T]he United States will continue to exert its best efforts to inform those engaged in business as bail-bondsmen or bounty-hunters...of the positions set forth in this exchange of letters.

This policy applies to persons found in Canada irrespective of citizenship.

Canada has a right to rely on the undertaking set out in the 1988 Exchange of Letters. The summary judgment runs directly counter to the undertakings of the United States Government because, rather than sending a signal that transborder bounty-hunting will not be tolerated in the United

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[23] 27 I.L.M. 422 (1988), included in the appendix hereto.

States, it seeks to exonerate the bonding company whose agents illegally abducted Mr. Jaffe from Canada.

The Canada-United States Letter of Understanding should be respected and given consideration, where applicable, by United States Courts. in addition, state courts should not sanction circumvention of the Canada-United States Extradition Treaty. Florida did not petition the United States Government to request Mr. Jaffe's extradition, and Canada did not refuse a request for Mr. Jaffe's extradition: This is not a case where the extradition process was tried and failed. There was no justification for extraordinary measures to be taken; Florida has used the Treaty successfully before and since the Jaffe instance to obtain the return of fugitives. Instead of giving effect to the Letter of Understanding and the Extradition Treaty in the summary judgment, the trial court simply ignored them.

The Government of Canada submits that the trial court's reasoning that it was Mr. Jaffe's misconduct which caused the unlawful abduction to occur is incorrect (R 107). Under such reasoning, an alleged breach of contract, tort, or criminal act would "justify" any tort, even wrongful death, if the bounty hunters brought their man back "dead or alive."

CONCLUSION

It is respectfully submitted that the summary judgment is incorrect in its finding that enforcement of the decision of the Supreme Court of Ontario in the case of Ruth Jaffe v. Hardy Snow and Accredited Surety & Casualty Company, Inc. would offend public policy, and therefore must be reversed.

Respectfully submitted,

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APPENDIX G

TREATY ON EXTRADITION BETWEEN THE UNITED STATES OF AMERICA AND CANADA

[Excerpts.]

Treaty signed at Washington December 3, 1971;
And agreement amending the treaty
Effected by exchange of notes
Signed at Washington June 28 and July 9, 1974;
. . .
Entered into force March 22, 1976.

ARTICLE 2

(1) Persons shall be delivered up according to the provisions of this Treaty for any of the offenses listed in the Schedule annexed to this Treaty, which is an integral part of this Treaty, provided these offenses are punishable by the laws of both Contracting Parties by a term of imprisonment exceeding one year.

SCHEDULE

8. Kidnapping; child stealing; abduction; false imprisonment.

12. Obtaining property, money or valuable securities by false pretenses or by threat of force or by defrauding the public or any person by deceit or falsehood or other fraudulent means, whether such deceit or falsehood would or would not amount to a false pretense.

15. Receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained.

16. Fraud by a banker, agent, or by a director or officer of any company.

APPENDIX H

PROTOCOL AMENDING THE TREATY ON EXTRADITION BETWEEN CANADA AND THE UNITED STATES OF AMERICA SIGNED AT WASHINGTON ON DECEMEER 3, 1971, AS AMENDED BY AN EXCHANGE OF NOTES ON JUNE 28 AND JULY 9, 1974

The Government of Canada and the Government of the United States of America;

Desiring to make more effective the Extradition Treaty between the Contracting Parties, signed at Washington on December 3, 1971, as amended by the agreement effected by an Exchange of Notes on June 28 and July 9, 1974 (hereinafter referred to as "the Extradition Treaty"):

Have agreed as follows:

ARTICLE 1

Article 2 of the Extradition Treaty is deleted and replaced by the following:

"Article 2

(1) Extradition shall be granted for conduct which constitutes an offense punishable by the laws of both Contracting Parties by imprisonment or other form of detention for a term exceeding one year or any greater punishment.

(2) An offense is extraditable notwithstanding

(i) that conduct such as interstate transportation or use of the mails or of other facilities affecting interstate or

foreign commerce, required for the purpose of establishing jurisdiction, forms part of the offense in the United States, or

(ii) that it relates to taxation or revenue or is one of a purely fiscal character."

ARTICLE II

The SCHEDULE to the Extradition Treaty, as amended, is deleted.

ARTICLE III

Paragraph (2) of Article 3 of the Extradition Treaty is deleted. Paragraph (3) of Article 3 of the Extradition Treaty is amended to read as follows:

"(2) When the offense for which extradition is requested was committed outside the territory of the requesting State, the executive or other appropriate authority of the requested State shall grant extradition if the laws of the requested State provide for jurisdiction over such an offense committed in similar circumstances. If the laws in the requested State do not so provide, the executive authority in the requested State may, in its discretion, grant extradition."

ARTICLE IV

Paragraph (2) of Article 4 of the Extradition Treaty, as amended, is deleted and replaced by the following:

"(2) For the purpose of this Treaty, the following offenses shall be deemed not to be offenses within subparagraph (iii) of this Article:

(i) An offense for which each Contracting Party has the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to its competent authorities for the purpose of prosecution;

(ii) Murder, manslaughter or other culpable homicide, malicious wounding or inflicting grievous bodily harm;

(iii) An offense involving kidnapping, abduction, or any form of unlawful detention, including taking a hostage;

(iv) An offense involving the placing or use of explosives, incendiaries or destructive devices or substances capable of endangering life or of causing grievous bodily harm or substantial property damage; and

(v) An attempt or conspiracy to commit, or counselling the commission of, any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses."

ARTICLE V

Article 7 of the Extradition Treaty is deleted and replaced by the following:

"Article 7

When the person sought is being proceeded against or is serving a sentence in the requested State for an offense other than that for which extradition is requested, the requested State may surrender the person sought or postpone surrender until the conclusion of the proceedings or the service of the whole or any part of the sentence imposed."

ARTICLE VI

Paragraph (3) of Article 11 of the Extradition Treaty is deleted and replaced by the following:

"(3) A person arrested shall be set at liberty upon the expiration of sixty days from the date of arrest pursuant to such application if a request for extradition and the documents specified in Article 9 have not been received. This stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request and documents are subsequently received."

ARTICLE VII

The Extradition Treaty is amended by adding the following after Article 17:

"Article 17 bis

If both contracting Parties have jurisdiction to prosecute the person for the offense for which extradition is sought, the executive authority of the requested State, after consulting with the executive authority of the requesting State, shall decide whether to extradite the person or to submit the case to its

competent authorities for the purpose of prosecution. In making its decision, the requested State shall consider all relevant factors, including but not limited to:

(i) the place where the act was committed or intended to be committed or the injury occurred or was intended to occur;

(ii) the respective interests of the Contracting Parties;

(iii) the nationality of the victim or the intended victim; and

(iv) the availability and location of the evidence."

ARTICLE VIII

Notwithstanding paragraph (2) of Article 18 of the Extradition Treaty, this Protocol shall apply in all cases where the request for extradition is made after its entry into force regardless of whether the offense was committed before or after that date.

ARTICLE IX

(1) This Protocol shall be subject to ratification in accordance with the applicable procedures of the Government of the United States and the Government of Canada and instruments of ratification shall be exchanged as soon as possible.

(2) The Protocol shall enter into force upon the exchange of instruments of ratification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

EN FOI DE QUOI, les soussignés, dûment autorisés par leurs Gouvernements respectifs, ont signé le présent Protocole.

DONE in duplicate at Ottawa, this 11th day of January 1988, in the English and French languages, the two texts being equally authentic.

FAIT en double exemplaire à Ottawa, ce 11ième jour de Janvier 1988 en français et en anglais, chaque version faisant également foi.

/s/ Joe Clark

FOR THE GOVERNMENT OF CANADA
POUR LE GOUVERNEMENT DU CANADA

/s/ George P. Shultz

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

POUR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

APPENDIX I

THE SECRETARY OF STATE

WASHINGTON

January 11, 1988

Dear Mr. Minister:

I refer to the Protocol Amending the Treaty on Extradition between the United States and Canada we signed today and have the honor to address to you the following.

The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters", is an extraditable offense under the United States - Canada Extradition Treaty.

The Right Honorable
Joe Clark, P.C., M.P.,
Secretary of State
For External Affairs of
Canada, Ottawa.

Where a person has been charged with or convicted of such an offense in Canada and is found within the jurisdiction of the United States, the United States agrees, upon request, to commence extradition proceedings against such a person pursuant to the Treaty in order that the person may be returned to Canada.

The United States will use its best efforts to honor Canadian requests for testimony, information, or other assistance pertaining to such abductions.

Canada and the United States agree to cooperate to deter such transborder abductions. To assist in achieving that purpose, the United States will continue to exert its best efforts to inform those engaged in business as bail bondsmen or bounty hunters and other interested parties of the positions set forth in this exchange of letters.

Canada and the United States agree to consult promptly concerning any case of transborder abduction involving bounty hunters which might arise in the future. The purpose of such consultations shall be to address matters relating to any such case, including any request by the Government of Canada for the return of the person so abducted. In the event of return, the Governments agree to co-operate to have the abducted person escorted to Canada and taken into custody at the border, pursuant to a request for provisional arrest, pending the outcome of extradition proceedings. For the purpose of these consultations, the principal law enforcement contact for the United States will be the Director of the Office of International Affairs of the Criminal Division of the Department of Justice.

I have the honor to propose that this letter and your reply constitute an understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Sincerely yours,

/s/ George P. Shultz

THE RT. HON. JOE CLARK, P.C., M.P.
Secretary of State for External Affairs

Ottawa, January 11, 1988

JLA-0026

Dear Mr. Secretary:

I have the honour to acknowledge receipt of your letter of today's date concerning transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters". I accept your proposal that your letter and this reply constitute an Understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Yours sincerely,

/s/ Joe Clark

The Honourable George P. Shultz
Secretary of State of the
United States of America